

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM REED ST. CLAIR,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

CASE NO. 14-cv-05141 JRC

ORDER ON PLAINTIFF'S
COMPLAINT

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S. Magistrate Judge and Consent Form, ECF No. 5; Consent to Proceed Before a United States Magistrate Judge, ECF No. 6). This matter has been fully briefed (*see* ECF Nos. 14, 15, 18).

After considering and reviewing the record, the Court concludes that the ALJ erred by failing to discuss an opinion from an examining doctor regarding plaintiff's

1 potential difficulties with authority figures and erred by not discussing adequately the
2 same doctor's opinion that plaintiff may have difficulties sustaining performance of
3 simple, repetitive tasks in the workplace.

4 Therefore, this matter is reversed and remanded pursuant to sentence four of 42
5 U.S.C. § 405(g) for further administrative proceedings consistent with this Order.

6 BACKGROUND

7 Plaintiff, WILLIAM REED ST. CLAIR, was born in 1987 and was 22 years old
8 on the alleged date of disability onset of October 13, 2009 (*see* Tr. 9, 95-105). Plaintiff
9 started the ninth grade, but was taken out of school and homeschooled, and did not
10 graduate or get a diploma (Tr. 38). Plaintiff worked part-time for his dad in his janitorial
11 business but has not worked since being shot in the head (Tr. 36-38).

13 According to the ALJ, plaintiff has at least the severe impairments of "status post
14 traumatic brain injury (TBI) with cognitive disorder NOS (20 CFR 416.920(c))" (Tr. 11).

15 At the time of the hearing, plaintiff was living at home with his parents (Tr. 36).

16 PROCEDURAL HISTORY

17 Plaintiff's application for Supplemental Security Income ("SSI") benefits pursuant
18 to 42 U.S.C. § 1382(a) (Title XVI) was denied initially and following reconsideration
19 (*see* Tr. 58-61, 65-70). Plaintiff's requested hearing was held before Administrative Law
20 Judge Robert P. Kingsley ("the ALJ") on November 3, 2011 (*see* Tr. 27-55). On April 23,
21 2012, the ALJ issued a written decision in which the ALJ concluded that plaintiff was not
22 disabled pursuant to the Social Security Act (*see* Tr.6-26).

1 In plaintiff's Opening Brief, plaintiff raises the following issues: (1) Whether or
 2 not the ALJ properly evaluated the medical evidence; (2) Whether or not the ALJ
 3 properly evaluated plaintiff's testimony; (3) Whether or not the ALJ properly evaluated
 4 the lay witness testimony; (4) Whether or not the ALJ properly assessed plaintiff's
 5 residual functional capacity; and (5) Whether or not the ALJ erred by basing his step four
 6 and alternate step five findings on a residual functional capacity assessment that did not
 7 include all of plaintiff's limitations (*see* ECF No. 14, p. 1).

8 STANDARD OF REVIEW

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 10 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's
 11 denial of social security benefits if the ALJ's findings are based on legal error or not
 12 supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d
 13 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir.
 14 1999)).

15 DISCUSSION

16 (1) **Whether or not the ALJ properly evaluated the medical evidence.**

17 Plaintiff argues that the ALJ erred by not giving full weight to opinions from
 18 examining doctors, Dr. Carla van Dam, Ph.D. and Dr. James Parker, M.D. (*see* ECF No.
 19 14, pp. 6-9). As discussed below, the Court agrees with plaintiff's argument. Although
 20 plaintiff also argues that the ALJ erred by not crediting fully opinions from non-
 21 examining, state agency medical consultants, the Court does not agree with plaintiff's
 22 argument regarding these opinions; however, because this matter is being remanded for
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1 further evaluation of the medical evidence, the state agency medical consultants' opinions
2 should be evaluated anew following remand of this matter.

3 When an opinion from an examining or treating doctor is contradicted by other
4 medical opinions, the treating or examining doctor's opinion can be rejected "for specific
5 and legitimate reasons that are supported by substantial evidence in the record." *Lester v.*
6 *Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996) (citing *Andrews v. Shalala*, 53 F.3d 1035,
7 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ
8 can accomplish this by "setting out a detailed and thorough summary of the facts and
9 conflicting clinical evidence, stating his interpretation thereof, and making findings."
10 *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881
11 F.2d 747, 751 (9th Cir. 1989)).
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13 A. Dr. Carla Van Dam, Ph.D., examining doctor

14 The ALJ gave only "limited weight" to Dr. van Dam's assignment of a GAF of 50
15 because plaintiff "had just endured a traumatic accident and he had just quit drinking but
16 not voluntarily" (see Tr. 16). As a GAF is a contemporaneous assessment of global
17 functioning, the fact that plaintiff recently had suffered a traumatic brain injury is not a
18 legitimate reason to discount her assessment of his functional ability at that time. Her
19 GAF of 50 clearly is her assessment of his functional ability at that time, in the context of
20 his recent gunshot to the head.
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22 The ALJ's second reason to discount her GAF assignment also is not legitimate.
23 The ALJ does not explain how the fact that plaintiff had recently involuntarily quit
24 drinking, a fact of which Dr. van Dam clearly was aware, negates her assessment of his

1 contemporaneous functioning (*see* Tr. 16). The Court also notes that although the ALJ
2 indicated that plaintiff “was not fully cooperative” in his evaluation with Dr. van Dam,
3 this finding is in direct contradiction to the opinion of Dr. van Dam that plaintiff
4 “cooperated fully on testing” (*see* Tr. 345).

5 B. Dr. James Parker, M.D., examining doctor

6 Although the ALJ indicates that he gave “little weight” to Dr. Parker’s assignment
7 of a GAF of 52-56 due in part to the ALJ’s finding that “objective testing has shown him
8 capable” of working, the ALJ does not specify any “objective testing” that demonstrated
9 that plaintiff was capable of working (*see* Tr. 16). Without more, this is not a specific and
10 legitimate reason to discount Dr. Parker’s assignment of a GAF of 52-56. *See Lester*,
11 *supra*, 81 F.3d at 830-31 (*citing Andrews, supra*, 53 F.3d at 1043; *Murray, supra*, 722
12 F.2d at 502). Although plaintiff may have successfully completed some of the tasks
13 presented during his evaluations, this does not demonstrate by objective testing that
14 plaintiff is capable of working. Since the ALJ failed to specify any other “objective
15 testing,” that statement alone does not constitute a specific and legitimate reason
16 supported by substantial evidence in the record as a whole.

17 Perhaps most importantly, the ALJ discounts Dr. Parker’s assessment that plaintiff
18 may have difficulty with sustaining simple, repetitive tasks with a finding that “the
19 claimant has demonstrated the ability to persist as noted by Dr. van Dam” (*see* Tr. 19; *see*
20 *also* Tr. 379). However, Dr. van Dam did not opine that plaintiff was capable of
21 persistence. Instead, Dr. van Dam opined that “given some structure he could engage in
22 more meaningful activities than might currently be the case” (*see* Tr. 347-48). There are
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1 two important differences between Dr. van Dam's opinion and the ALJ's characterization
2 of her opinion: First, she indicated that he would need "some structure" -- a finding
3 buttressed by the number of occasions at which he required additional prompting to
4 answer the questions put forth by Dr. van Dam (*see, e.g.*, Tr. 345 ("it took some effort to
5 get him to respond at all to various questions;" and during testing of abstract reasoning,
6 plaintiff "at first insisted that he had no idea what it meant," and to a second example,
7 only answered "when pressed to venture a guess")). Although Dr. van Dam also noted
8 that plaintiff was able to complete the testing and stay on task when continually
9 prompted, the ability to answer questions when prompted in a structured environment at a
10 doctor's office is not the same as the ability to sustain accurate performance in a full time
11 work setting without additional structure.
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13 Secondly, Dr. van Dam opined that with structure, plaintiff would be capable of
14 engaging in "more meaningful activities than might currently be the case," not that he
15 would be capable of persisting on a full time basis with the performance of work tasks
16 (*see* Tr. 347-48). At the time, plaintiff was living at home with his parents and never
17 leaving the house. Even if plaintiff was capable of engaging in more meaningful activities
18 than living at home with his parents and never leaving the house, that does not
19 necessarily translate into an ability to persist in full time employment in a non-structured
20 work environment.
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22 Although the ALJ also relied on a finding that plaintiff demonstrated adequate
23 decision making skills in his testing, plaintiff demonstrated such poor judgment after his
24 brain injury that he "needed 24-hour supervision," as noted by the ALJ (*see* Tr. 14); and,

1 the trained mental health professional who subsequently explicitly evaluated plaintiff's
2 mental status indicated a different opinion from that of the ALJ, and opined that
3 plaintiff's judgment was "poor" (*see* Tr. 395; *see also* Tr. 404). Additionally, as noted by
4 the ALJ, plaintiff "reported drinking up to 36 beers and one pint of whiskey daily" prior
5 to his injury (*see* Tr. 18 (*citing* Exhibit 2F/12)), and the fact that he indicated a desire to
6 resume drinking as soon as possible despite shooting himself in the head while
7 intoxicated does very little to demonstrate good decision making skills and judgment (*see*
8 Tr. 347). As opined by Dr. van Dam, plaintiff's intent to return to his steady alcohol
9 drinking demonstrated that plaintiff was "thereby showing little insight or judgment
10 regarding his circumstances" (*see id.*). The Court also notes that plaintiff "was
11 recommended AA, but he refuses to go because he does not think he has a drinking
12 problem and does not see the correlation with his anger and irritability" (*see* Tr. 336). It
13 also is unclear how decision making skills translate into persistence.
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15 For these reasons and based on the record as a whole, the Court concludes that the
16 ALJ's finding that plaintiff "demonstrated adequate decision making skills on testing"
17 does not support the ALJ's rejection of the medical opinion from examining doctor, Dr.
18 Parker regarding plaintiff's potential difficulty with sustaining performance of simple,
19 repetitive tasks with reasonable accuracy (*see* Tr. 19). Therefore, this conclusion is not
20 supported by substantial evidence in the record as a whole.
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22 Similarly, although the ALJ found that plaintiff's decision making skills "would
23 likely only be limited in day-to-day life by his lack of motivation and poor attitude," the
24 record as a whole and plaintiff's post-injury testing demonstrates that plaintiff's traumatic

1 brain injury also limits his decision making skills. In addition, the ALJ does not explain
2 the logical nexus between plaintiff's decision making skills and his ability to persist and
3 sustain work performance. The ability to make a decision, even if such ability is
4 adequate, does not appear largely related to an ability to persist and sustain work
5 activities. Based on the record as a whole, the Court concludes that the ALJ's finding that
6 plaintiff's decision making skills "would likely only be limited in day-to-day life by his
7 lack of motivation and poor attitude" does not adequately explain the ALJ's failure to
8 credit the opinion from Dr. Parker that plaintiff may have difficulty sustaining accurate
9 performance of simple, repetitive tasks.
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11 The Court also concludes that the fact that plaintiff was very good at his job of
12 floor waxer before he suffered the gunshot to the head does not provide a legitimate
13 reason to discredit Dr. Parker's opinion that following the traumatic brain injury plaintiff
14 may have difficulty sustaining the performance of simple, repetitive tasks (*see* Tr. 19,
15 379). Finally, the ALJ does not indicate what aspect of the record supports his finding
16 that plaintiff "seems to indicate a decrease in impulsive behavior since the accident" (*see*
17 Tr. 19). It is unclear what the ALJ based this finding on and such a finding also does not
18 appear to demonstrate persistence ability. Therefore, the Court concludes based on the
19 record as a whole that this finding is not based on substantial evidence in the record as a
20 whole and does not justify the ALJ's rejection of the opinion of Dr. Parker regarding
21 plaintiff's potential limitation regarding sustaining accurate performance of simple,
22 repetitive tasks.
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1 For the reasons stated and based on the record as a whole, the Court concludes that
2 the ALJ did not provide specific and legitimate reasons based on substantial evidence in
3 the record as a whole for the rejection of Dr. Parker's opinion that plaintiff may have
4 difficulty sustaining the performance of simple, repetitive tasks.

5 Similarly, although the ALJ gave "little weight" to Dr. Parker's assignment of a
6 GAF of 52-56 with a finding that "it appears to be based on psychosocial stressors of
7 being unemployed and a recent relationship breakup rather than his ability to work," there
8 is not substantial evidence in the record to support this finding by the ALJ (Tr. 16).
9 Although Dr. Parker noted these factors in the section where psychosocial stressors
10 always are reported, nothing in Dr. Parker's opinions suggests that he relied on such
11 findings when providing his opinion regarding plaintiff's global assessment of
12 functioning ("GAF"). In fact, the opinion from Dr. Parker explicitly suggests otherwise,
13 as in the subsequent section regarding functional assessment, neither one of these facts is
14 mentioned, instead Dr. Parker notes plaintiff's history of alcohol and drug abuse; his
15 indications of impulsiveness; his irritability; and his problems with authority figures (*see*
16 Tr. 379).

17 Furthermore, the Court notes that the ALJ failed to mention Dr. Parker's opinion
18 that plaintiff's problems with authority figures "would be a problem in a workplace" (*see*
19 *id.*).

20 The Commissioner "may not reject 'significant probative evidence' without
21 explanation." *Flores v. Shalala*, 49 F.3d 562, 570-71 (9th Cir. 1995) (*quoting Vincent v.*
22 *Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984) (*quoting Cotter v. Harris*, 642 F.2d 700,
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1 706-07 (3d Cir. 1981))). The “ALJ’s written decision must state reasons for disregarding
2 [such] evidence.” *Flores, supra*, 49 F.3d at 571.

3 Dr. Parker’s opinion that plaintiff’s problems with authority figures “would be a
4 problem in a workplace” is significant, probative evidence that the ALJ erred in failing to
5 discuss. *See id.* (*see also* Tr. 379). The ALJ found that plaintiff is able to interact
6 occasionally with supervisors without any discussion of plaintiff’s problems with
7 authority figures as opined by Dr. Parker (*see* Tr. 13, 379). However, according to Social
8 Security Ruling (“SSR”) 96-8p, a residual functional capacity assessment by the ALJ
9 “must always consider and address medical source opinions. If the RFC assessment
10 conflicts with an opinion from a medical source, the adjudicator must explain why the
11 opinion was not adopted.” *See* SSR 96-8p, 1996 SSR LEXIS 5 at *20.

13 The ALJ’s failure to discuss Dr. Parker’s opinion regarding plaintiff’s difficulties
14 with authority figures is legal error, *see id.*; *Flores, supra*, 49 F.3d at 571; and his failure
15 to explain adequately why Dr. Parker’s opinion that plaintiff may have difficulty with
16 sustaining simple, repetitive tasks was not accommodated into plaintiff’s RFC also is
17 legal error. *See Lester, supra*, 81 F.3d at 830-31 (*citing Andrews, supra*, 53 F.3d at 1043;
18 *Murray, supra*, 722 F.2d at 502). These legal errors are not harmless, as had they been
19 incorporated into plaintiff’s RFC, the ultimate determination regarding disability may
20 have been different.

21 The Ninth Circuit has “recognized that harmless error principles apply in the
22 Social Security Act context.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
23 (*citing Stout v. Commissioner, Social Security Administration*, 454 F.3d 1050, 1054 (9th
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1 Cir. 2006) (collecting cases)). The Ninth Circuit noted that “in each case we look at the
2 record as a whole to determine [if] the error alters the outcome of the case.” *Id.* The court
3 also noted that the Ninth Circuit has “adhered to the general principle that an ALJ’s error
4 is harmless where it is ‘inconsequential to the ultimate nondisability determination.’” *Id.*
5 (*quoting Carmickle v. Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008))
6 (other citations omitted). The court noted the necessity to follow the rule that courts must
7 review cases “‘without regard to errors’ that do not affect the parties’ ‘substantial
8 rights.’” *Id.* at 1118 (*quoting Shinsheki v. Sanders*, 556 U.S. 396, 407 (2009) (*quoting* 28
9 U.S.C. § 2111) (codification of the harmless error rule)).

11 Based on the record as a whole, the Court concludes that the ALJ’s failure to
12 discuss Dr. Parker’s opinion regarding plaintiff’s difficulties with authority figures; and
13 his failure to explain adequately why Dr. Parker’s opinion that plaintiff may have
14 difficulty with sustaining simple, repetitive tasks was not accommodated into plaintiff’s
15 RFC, may have affected the outcome of the case. *See Molina, supra*, 674 F.3d at 1115.
16 Therefore, they are not harmless errors. The Court also concludes that the ALJ did not set
17 “out a detailed and thorough summary of the facts and conflicting clinical evidence,
18 stating his interpretation thereof, and making findings,” with regard to the opinions of
19 Drs. Van Dam and Parker. *See Reddick, supra*, 157 F.3d at 725 (*citing Magallanes,*
20 *supra*, 881 F.2d at 751). These opinions should be evaluated anew following remand of
21 this matter.

23 C. State agency non-examining doctors, Dr. Thomas Clifford, Ph.D. and Dr. Bruce
24 Eather, Ph.D.

1 Because this Court is directing the ALJ to re-evaluate the medical evidence, it is
2 appropriate that the ALJ also reconsider his evaluation of the state agency non-examining
3 physicians' opinions in light of that re-evaluation.

4 D. Other medical evidence from examining source, Mr. Bill Wilson, M.A., M.H.P.

5 Plaintiff also complains about the ALJ's rejection of lay evidence from Mr.
6 Wilson regarding plaintiff's GAF score of 45, and his opinion that plaintiff was "possibly
7 unemployable" (*see* ECF No. 14, p. 10 (*citing* Tr. 16; *see also* Tr. 397)). The ALJ
8 rejected these opinions from Mr. Wilson, in part, by finding that they appeared to be
9 "based solely on the claimant's reports" (*see* Tr. 16).

10 An ALJ may disregard opinion evidence provided by both types of "other
11 sources," characterized by the Ninth Circuit as lay testimony, "if the ALJ 'gives reasons
12 germane to each witness for doing so.'" *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217,
13 1224 (9th Cir. 2010) (*quoting* *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001)). Here,
14 although Mr. Wilson reported plaintiff's self-reports, Mr. Wilson also made a number of
15 independent observations, on multiple examinations, such as that plaintiff appeared
16 unkempt, expressionless, and hostile, (*see* Tr. 390-407). Mr. Wilson also observed that
17 plaintiff was "staring at [the] floor-fetal sitting position-clutching self" (Tr. 404). These
18 are significant, probative observations that the ALJ should have discussed.
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20 Therefore, based on the record as a whole, the Court concludes that the ALJ
21 should consider anew the opinions of Mr. Wilson following remand of this matter.
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23 As discussed above, *see supra*, sections 1.A and B, this matter must be reversed
24 and remanded for further consideration of the medical evidence. The opinions of Drs. van

1 Dam and Parker require a more detailed and thorough analysis. The ALJ also should
2 evaluate anew the other medical evidence provided by Mr. Wilson.

3 **(2) Whether or not the ALJ properly evaluated plaintiff's testimony.**

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5 The Court already has concluded that the ALJ erred in reviewing the medical
6 evidence and that this matter should be reversed and remanded for further consideration,
7 *see supra*, section 1. In addition, a determination of a claimant's credibility relies in part
8 on the assessment of the medical evidence. *See* 20 C.F.R. § 404.1529(c). Therefore,
9 plaintiff's credibility should be assessed anew following remand of this matter.

10 **(3) Whether or not the ALJ properly evaluated the lay witness testimony.**

11 Plaintiff challenges the rejection by the ALJ of opinions from multiple lay
12 witnesses, including the lay statements from both of plaintiff's parents and the lay
13 evidence from Ms. Deyla Schneider, the owner of Career Quest, an agency that provides
14 assessments, evaluations and vocational services (*see* ECF No. 14, pp. 16-21). Because
15 the Court has concluded already that this matter must be reversed and remanded, *see*
16 *supra*, section 1; based on the record as a whole; and for the specific reasons elucidated
17 below, the Court concludes that all of the lay evidence should be evaluated anew
18 following remand of this matter, including the other medical evidence from Mr. Wilson,
19 as discussed above, *see supra*, section 1.D.

21 The Ninth Circuit has characterized lay witness testimony as "competent
22 evidence," noting that an ALJ may not discredit "lay testimony as not supported by
23 medical evidence in the record." *Bruce v. Astrue*, 557 F.3d 1113, 1116 (9th Cir. 2009)

(citing *Smolen v. Chater*, 80 F.3d 1273, 1289 (9th Cir. 1996)). However, the ALJ failed to credit the lay evidence provided by plaintiff's mother by finding that "the objective medical evidence does not support the[] allegations" (Tr. 20). This is not a proper rationale for the rejection of her lay statement. *See Bruce, supra*, 557 F.3d at 1116 (citing *Smolen, supra*, 80 F.3d at 1289). Although the ALJ also found that "at one evaluation it was found that he demonstrated adequate memory, reasoning, and judgment to perform most activities independently" the ALJ is improperly mistaking plaintiff's "Functional Goals" with medical findings (Tr. 20 (citing Tr. 331)). Although the ALJ may have provided a reason to reject one statement by plaintiff's mother that he called multiple times when they were away shopping, suggesting that he was bored, this reason does not apply to all of the limitations and opinions included in the lay statement.

Similarly, the ALJ's characterization of the lay testimony from plaintiff's father as demonstrating that plaintiff is able to do simple work is not based on substantial evidence in the record and does not reflect a thorough review of this lay testimony provided at plaintiff's administrative hearing (*see* Tr. 19-20, 43-49). For example, plaintiff's father testified that if he gave plaintiff a task to accomplish, that usually within a five or ten minute period, plaintiff would wander off and not complete the task; that plaintiff tires easily; that plaintiff complains of headaches (*see* Tr. 47); and that he has witnessed plaintiff having angry outbursts (*see* Tr. 48).

(4) **Whether or not the ALJ properly assessed plaintiff's residual functional capacity ("RFC").**

1 Because the Court has concluded that this matter shall be reversed and remanded
2 for further proceedings, plaintiff's RFC should be assessed anew following remand of
3 this matter.

4 (5) **Whether or not the ALJ erred by basing his step four and alternate**
5 **step five findings on a residual functional capacity assessment that did**
6 **not include all of plaintiff's limitations.**


7 Similarly, the step four and step five findings, as necessary, must be assessed anew
8 following remand of this matter.

9 CONCLUSION

10 Based on the stated reasons and the relevant record, the Court **ORDERS** that this
11 matter be **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. §
12 405(g) to the Acting Commissioner for further consideration.

13 **JUDGMENT** should be for plaintiff and the case should be closed.

14 Dated this 23rd day of October, 2014.

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20 J. Richard Creatura
21 United States Magistrate Judge
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